

FILED IN OPEN COURT
DATE 11-14-06
BY LJ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA :

v.

: Criminal No. 7:06cr00101-1

ADVANCED METAL FINISHING :
OF ROANOKE, INC. :

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and defendant, **ADVANCED METAL FINISHING OF ROANOKE, INC.** ("ADVANCED METAL FINISHING"), enter into the following plea agreement:

THE CHARGES, STATUTORY PUNISHMENT AND PLEA

1. **ADVANCED METAL FINISHING**, being fully cognizant of its rights, by resolution of its Board of Directors, a copy of which is attached hereto (Attachment A), and in exchange for the considerations to be made by the United States as set forth in this Agreement, will knowingly and voluntarily enter a plea of **guilty** to Count One of an Information charging it with the following:

knowingly discharging pollutants into the sewer system in violation of a pretreatment program approved under Title 33, United States Code, Section 1342, in violation of Title 33, United States Code, Sections 1317 and 1319(c)(2)(A).



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2. The United States and **ADVANCED METAL FINISHING** agree that the maximum statutory penalty for Count One is a fine of not less than \$5,000.00 per day of violation and not more than \$50,000.00 per day of violation or up to \$500,000.00, whichever is greater, pursuant to Title 18, United States Code, Section 3571(c). In addition, a special assessment of \$400.00 per felony count of conviction pursuant to Title 18, United States Code, Section 3013(a)(2)(B), and a period of probation of up to five years per count pursuant to Title 18, United States Code, Section 3561 may be imposed.

The United States and **ADVANCED METAL FINISHING** agree that the provisions of Chapter 8 of the United States Sentencing Guidelines, which pertain to fines imposed on organizational defendants such as **ADVANCED METAL FINISHING** do not apply to environmental offenses, including Clean Water Act violations. See Title 18, United States Code, Sections 3553 and 3572 and U.S.S.G. Sections 8C2.1, Commentary, and 8C2.10. The United States and **ADVANCED METAL FINISHING** further agree that the remaining provisions of Chapter 8 of the Sentencing Guidelines, including community service and probation, apply to **ADVANCED METAL FINISHING**.

ACKNOWLEDGMENT AND WAIVER OF RIGHTS

3. **ADVANCED METAL FINISHING** is represented in this matter by Charles L. Williams, Esquire. **ADVANCED METAL FINISHING** acknowledges its right to assistance of counsel, which it has exercised, as evidenced by the signature of **ADVANCED METAL FINISHING**'s attorneys, indicating that they have witnessed and approved this Plea Agreement.



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4. **ADVANCED METAL FINISHING** understands that it has an absolute right to be tried by a jury; that at such trial it has the right to require the United States to prove the entire case against it beyond a reasonable doubt; and that it has the right to confront and cross-examine the witnesses against it and to present witnesses on its own behalf. **ADVANCED METAL FINISHING** understands that by its guilty plea, **ADVANCED METAL FINISHING** expressly waives those rights, acknowledges its guilt, and acknowledges that no trial will in fact occur, and that the only action remaining to be taken in this case is the imposition of the sentence.

5. **ADVANCED METAL FINISHING** acknowledges that it has reviewed and discussed the pending Information against it in this matter with its attorneys, and that its attorneys have explained to **ADVANCED METAL FINISHING** their understanding of the government's evidence. **ADVANCED METAL FINISHING** acknowledges that it is being charged by an Information and not by return of an Indictment by a Grand Jury.

6. **ADVANCED METAL FINISHING** agrees that there is a legal and factual basis to support each and every element of the offenses charged in the Information before the Court.

THE RECOMMENDED SENTENCE

7. The United States recommends the following sentence as an appropriate disposition of this case.

A. Imposition of a \$25,000.00 fine, pursuant to Title 18, United States Code, Section 3571.

B. Placement of **ADVANCED METAL FINISHING** on probation for three (3) years on the terms and conditions contained in paragraph 8;

C. During probation, **ADVANCED METAL FINISHING** will initiate and complete community service projects, programs, audits and testing as described in paragraph 8(A), at a cost which shall amount to not less than \$50,000, including any fine amount.

CONDITIONS OF PROBATION

8. **ADVANCED METAL FINISHING** agrees to the following terms and conditions of probation:

A. **COMMUNITY SERVICE PROJECTS - ADVANCED**

METAL FINISHING agrees to spend not less than \$25,000.00 during probation on community service projects approved by the United States prior to sentencing.

ADVANCED METAL FINISHING will submit a proposed list of projects to the United States Attorney's Office by October 16, 2006, for review and approval. This list must give specific details of the activities involved in the projects, including a schedule for completion, and provide a close estimate of the actual cost of the project, including a breakdown of the specific internal costs of the project. These projects must include at least one seminar concerning the education of other electroplaters in the Western District of Virginia on environmental compliance issues. The United States retains the right to approve the specific details of these projects and the projects must be completed during the period of probation.

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B. **ENVIRONMENTAL COMPLIANCE PROGRAM -**

ADVANCED METAL FINISHING acknowledges that the United States Sentencing Guidelines requires the Court to determine whether a defendant has an "effective program to detect and prevent violations of law" pursuant to Chapter 8, Section 8A1.2, Application Note 3(k) and Section 8C2.5(f). **ADVANCED METAL FINISHING** will develop and implement an Environmental Management System (EMS) which satisfies this requirement by December 31, 2006. **ADVANCED METAL FINISHING** will submit an outline and schedule of its plan to develop the EMS, including time lines and milestones with applicable dates, to the United States at least 20 days prior to sentencing. When completed, **ADVANCED METAL FINISHING** will submit evidence of its program to the Probation Office and the United States by December 31, 2006. At a minimum, the program will consist of:

- i. **ADVANCED METAL FINISHING** will develop an environmental compliance manual by October 16, 2006 which will be submitted to the Probation Office and the United States for review and approval. All current **ADVANCED METAL FINISHING** employees in supervision and management positions and any environmental regulatory compliance officers will be required to read the environmental compliance manual within 30 days of its approval by the Probation Office and the United States. New supervisors and management employees must read the manual within 10 days of reporting to work. Any employee below the level of supervisor who handles or generates industrial pollutants and wastewater shall be instructed and

trained as to the contents of the manual. Such training shall include an oral presentation of the material contained in the relevant chapters and shall be concluded within 90 days of approval of the manual by the United States Attorney's Office and the Probation Office. **ADVANCED METAL FINISHING** will keep copies of the manual at its facility on Norfolk Avenue. The manual should cover general areas of federal, state and local environmental regulations, including management of industrial wastewater and hazardous waste; regulatory agency notifications in case of spills, releases, emissions or discharges of pollutants into the environment; dealings with regulatory inspectors and personnel, and the importance of accuracy, timeliness and honesty in reporting to regulatory agencies all information required by the Clean Water Act and other federal and state environmental programs and permits.

ii. **ADVANCED METAL FINISHING** will assure that there is a system in place which requires its employees to report environmental noncompliance without fear of retribution. See U.S.S.G. § 8A1.2, Application Note 3(k)(5).

iii. **ADVANCED METAL FINISHING** will set up a system for providing systematic training to new employees and refresher training for other employees on federal, state and local environmental regulation.

iv. **ADVANCED METAL FINISHING** will require that the President of **ADVANCED METAL FINISHING** be responsible for assuring that all required government certifications contain no false statements or representations.



C. PRE-TREATMENT COMPLIANCE - ADVANCED METAL

FINISHING understands that the Western Virginia Water Authority may conduct unannounced sampling of its wastewater to confirm compliance with the local pretreatment program's requirements.

D. TERMINATION OF EMPLOYMENT - ADVANCED METAL

FINISHING will terminate the permanent full time employment of any employee who knowingly fails to comply with **ADVANCED METAL FINISHING**'s environmental compliance manual and federal, state and local Clean Water Act requirements.

E. WARRANTLESS SEARCHES AND SEIZURES - ADVANCED

METAL FINISHING agrees to accept warrantless searches, and seizures where appropriate, at its facility to assure that its wastewater treatment operations are in compliance with federal, state, and local requirements.

**AGREEMENTS BY ADVANCED METAL FINISHING
AND THE UNITED STATES**

9. As part of this Agreement, **ADVANCED METAL FINISHING** agrees that:

A. REMEDIES FOR BREACH OF PLEA AGREEMENT OR

VIOLATION OF PROBATION - ADVANCED METAL FINISHING understands that if it breaches any provision of this Agreement at any time prior to the expiration of probation, or violates the conditions of its probation, the United States Attorney's office may ask the Court to find that **ADVANCED METAL FINISHING** violated the terms of



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this Agreement or the conditions of its probation and **ADVANCED METAL FINISHING** agrees that the Court may, in its discretion, impose an additional monetary penalty up to the statutory maximums of \$50,000.00 per day of violation or \$500,000.00.

B. **WAIVER OF STATUTE OF LIMITATIONS** - If, for any reason, this Plea Agreement is withdrawn or otherwise not consummated by the entry of the convictions and sentences provided for under this Plea Agreement or if this Agreement is breached by **ADVANCED METAL FINISHING** or set aside by any court, **ADVANCED METAL FINISHING** hereby waives its right to raise the defense of the statute of limitations until March 1, 2009, as to any charges which could have been brought and were not barred as of the date this agreement is signed but were not charged as a result of this Plea Agreement.

10. As part of this Agreement, the United States agrees that it will accept the plea of guilty by **ADVANCED METAL FINISHING** as provided above, in full satisfaction of all possible federal criminal charges that might have been brought against **ADVANCED METAL FINISHING** in connection with this investigation. Based upon what is now known to the United States, with the convictions of **ADVANCED METAL FINISHING**, the United States will have completed its investigation.

11. The United States and **ADVANCED METAL FINISHING** further agree to the following:



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A. Nothing in this Plea Agreement limits the right of any agency of the United States to seek and take civil or administrative action against **ADVANCED METAL FINISHING** including but not limited to any action relating to suspension, debarment or listing. The United States Attorney's Office does not get involved in negotiating these issues but does provide information when requested.

B. The United States and **ADVANCED METAL FINISHING** may comment on the evidence and circumstances of this case and bring to the Court's attention all facts relevant to sentencing. The United States reserves the right to rebut any statement made by or on behalf of **ADVANCED METAL FINISHING** at sentencing.

C. All notices and written submissions required to be sent to the United States Attorney's Office shall be sent to Jennie L. M. Waering, Assistant United States Attorney, P. O. Box 1709, Roanoke, Virginia 24008.

D. The United States and **ADVANCED METAL FINISHING** agree that no additional promises, agreements or conditions have been entered into other than those set forth in this document, and none will be entered into unless in writing.

Date: 7/26/06

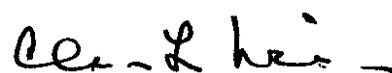


TIMOTHY M. MIGLIARESE
President and Chief Executive Officer
ADVANCED METAL FINISHING OF
ROANOKE, INC.

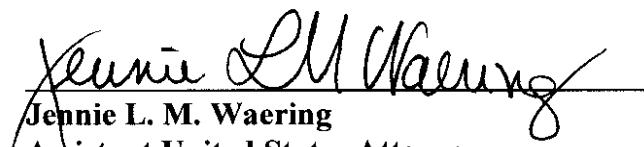
Date: 7/26/06


TIMOTHY M. MIGLIARESE
Chairman of the Board
ADVANCED METAL FINISHING OF
ROANOKE, INC.

Date: 8/1/06


Charles L. Williams, Jr., Esquire
Counsel for ADVANCED METAL
FINISHING OF ROANOKE, INC.

Date: 7/27/06


Jennie L. M. Waering
Assistant United States Attorney
Virginia State Bar Number 20570

Date: 11/14/06


David Lastra
Special Assistant United States Attorney